

- Appl. No. 09/880,322
Amdt. dated Sep. 29, 2003
Reply to Office action of Jun. 23, 2003

RESPONSE TO THE FINAL OFFICE ACTION

Claims 1-5, 7-12 and 14-26 are now in the case.

Claims 6 and 13 have been CANCELLED.

The claims have been further amended to include the limitation: ***“chemically transform said first compound;”*** to more particularly point out and distinctly claim the invention. It is clear that since Newsom uses his sulfamic acid/sulfamates only as surfactants,¹ no chemical transformation occurs with respect thereto. Thus, the claims have been amended to further patentably distinguish over the Newsom reference, as well as the other prior art relied upon by the Examiner.

THE REJECTION

The Examiner continues to reject claims 1-5, 7-12 and 14-26 as being unpatentable *over the combined teachings* of Newsom, Jr. (US 4,383,846), Woodhouse (US 2,237,826), Facere (US 2,739,886) and John Deere, *Fundamentals of Machine Operation*, Chap. 2, “Fertilizers and Lime.” pp. 15-35, (1976).

TRAVERSAL OF THE REJECTION

Applicant hereby takes notice of all arguments set forth in his last response to the merits of the case and incorporates all of these arguments herein by reference.

Woodhouse teaches the addition of sulfamic acids and/or sulfamic acid salts merely for the purposes of ***nitrifying liquid fertilizer solutions e.g., increasing the concentration of soluble nitrogen and/or ammonia moieties in such solutions*** (see e.g., page 1, column 2, lines 10-21 and lines 30-34). A thorough reading of Woodhouse discloses no chemical reaction taught in the practice of the Woodhouse invention.

The Examiner has made no direct rebuttal to the arguments in applicant's last response rebutting his contention of chemical reaction by his combination of prior art references. Instead the Examiner states only that:

"Applicant argues that the compositions of the prior art [Newsom]² do not involve reacting the components; however, inasmuch as the components are ionic species in solution, ***it would appear*** that reactions between the ***ionic species*** necessarily take place, particularly in view of the fact that ***indications of chemical reactions occur*** such as ***precipitations*** (emphasis added)."

Applicant contends that Examiner's forgoing statement is untenable for at least the following reasons:

1. The most thorough reading of the Newsom reference provides no direct disclosure that his invention involves a chemical reaction. Newsome equates *reagents (including his disclosed sulfamic acids and/or sulfamic acid salts)* with *surfactants*³ (column 3, lines 47-49), ***and not chemical reactants.***
2. The ***precipitates*** that the Examiner attributes to ***indications of chemical reactions***,⁴ can be attributed to phenomenon ***other than chemical reaction***, e.g., solubility effect, flocculation,⁵ etc.

¹ See arguments *infra*, re: "chemical characteristics of a surfactant remain unchanged throughout its use ***as a surfactant.***"

² Based upon reading of the whole record, applicant presumes that the Examiner is making particular reference to Newsom when he refers to the "prior art."

³ Hawley's Condensed Chemical Dictionary defines surfactant or surface active agent as: "[A]ny compound that reduced surface tension when dissolved in water or water solution or which reduces interfacial tension between two liquids, or between a liquid and a solid."

⁴ Applicant persists in his contention that Newsom teaches *if anything* retarding chemical reaction, and thus *teaches away* from the Examiner's speculation of a chemical reaction occurring in the invention of Newsom.

⁵ Indeed, Newsom teaches flocculation at col. 3, lns 14-18.

At best Newsom teaches the use sulfamic acid and/or sulfamates in his invention, **only** as surfactants. The chemical characteristics of a surfactant remain unchanged throughout its use **as a surfactant**. No chemical reaction occurs with respect to the surfactant **throughout its use as a surfactant**. Thus, when Newsom uses sulfamic acid/sulfamates as a surfactant, no chemical change occurs with respect to such sulfamic acid/sulfates **throughout their use as surfactants** in the invention of Newsom.

3. The Newsom invention involves the "addition of surfactant compounds which **retard the formation** of magnesium-containing **precipitates...**" (See e.g., col. 3, lns 9-14; col. 3, lns 47-49; col. 4, lns 20-35). Thus, Newsom adds his surfactants (including sulfamate moieties) **to avoid reactions** that produce precipitates rather than to provide them. Thus, **arguendo**, even if Newsom teaches a chemical reaction, as the Examiner purports, Newsom reference would be **teaching away** from such a chemical reaction **by retarding it**. See applicant's arguments re **teaching away** in applicant's last response.

For any and or all of the forgoing reasons, applicant respectfully contends that the Examiner's hypothesized chemical reaction is based upon mere speculation. It is well settled that:

"...[S]peculation is not a sufficient basis for a prima facie case of obviousness. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert.

denied, 389 U.S. 1057 (1968); *In re Sporck*, 301 F.2d 686, 690, 133 USPQ 360, 364 (CCPA 1962).

See also: *American Cyanamid Co. v. Federal Trade Commission*, 363 F.2d 757 (6th Cir. 06/16/1966); *In re Steele*, 305 F.2d 859, 862-63, 134 USPQ 292, 295 (CCPA 1962); *In re Deuel*, 51 F.3d 1552 (Fed. Cir. 03/28/1995); *In re Roemer*, 258 F.3d 1303 (Fed. Cir. 07/24/2001); *In re Warner*, 54 C.C.P.A. 1628, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057, 19 L. Ed. 2d 857, 88 S. Ct. 811 (1968); *In re Jones*, 958 F.2d 347, 351, 21 USPQ2d 1941, 1944 (Fed. Cir. 1992); *In re Laskowski*, 871 F.2d 115, 117, 10 USPQ2d 1397, 1398-99 (Fed. Cir. 1989); *In re de Jong*, 57 C.C.P.A. 701, 416 F.2d 1401, 1404, 163 USPQ 479, 482 (CCPA 1969); *Panduit Corp. v. Dennison Manufacturing Co.*, 810 F.2d 1561 (Fed. Cir. 01/23/1987); *In re GPAC Inc.*, 57 F.3d 1573 (Fed. Cir. 06/20/1995); *In re Deuel*, 51 F.3d 1552 (Fed. Cir. 03/28/1995); *Felburn v. New York Central Railroad Co.*, 350 F.2d 416 (6th Cir. 08/31/1965); *In re Rouffet*, 47 U.S.P.Q.2d 1453, 149 F.3d 1350 (Fed. Cir. 07/15/1998); all generally condemning the practice of speculation and hindsight reconstruction as a bases for forming a prima facie case of obviousness. Here, it is respectfully submitted that in purporting to have made out a prima facie case of obviousness against the claims, the Examiner has succumbed to the allure of speculation and the forbidden hindsight reconstruction.

For any or all of the forgoing reasons, it is respectfully submitted that the claims as presently amended should be ALLOWED.

Respectfully submitted,


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